

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

July 3, 2006

RH05049799

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi proposes to adopt the regulations described below after considering comments from the public. The Commissioner seeks to add Title 10, Chapter 5, Subchapter 3, Article 7.1 to the California Code of Regulations. Additionally, the Commissioner seeks to amend Title 10, Chapter 5, Subchapter 3, Article 14 of the California Code of Regulations. The proposed regulations will interpret the provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt the proposed regulations under the authority of Insurance Code sections 12401.3 and 12401.5, which recognize the Commissioner's authority to ensure uniform administration of rate regulatory laws through the aid of a statistical plan and to hold excessive any rate that is unreasonably high for the insurance or other services provided.

The proposed regulations will implement, interpret and make specific Insurance Code sections 12340.3, 12340.7, 12340.8, 12401, 12401.1, 12401.3, 12401.5, 12401.7, 12401.71, 12401.9, 12404.1, 12414.14, 12414.15, 12414.16, 12414.17 and 12414.27.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: **August 30, 2006 - 10:00 a.m.**

Location: **Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Bryant Henley, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
henleyb@insurance.ca.gov
Telephone: (415) 538-4111
Facsimile: (415) 904-5490

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Kim Morimoto, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
morimotok@insurance.ca.gov
Telephone: (415) 538-4143
Facsimile: (415) 904-5490

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on August 30, 2006**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: henleyb@insurance.ca.gov or morimotok@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be directed to the attention of Bryant Henley using the following fax number: (415) 904-5490. Comments sent to e-mail addresses or facsimile numbers, other than those provided herein will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

The laws concerning the business of title insurance were substantially revised in 1973 to encompass the ratemaking activities of title insurers, underwritten title companies and controlled escrow companies. In a letter to then-Governor Reagan urging the Governor to sign these Legislative revisions into law, the sponsor of the legislation, Senator George N. Zenovich, described the purposes of the law as follows:

[Senate Bill 1293] substantially increases the regulatory power of the Department of Insurance over the business of Title Insurance in this state.

Under existing law the provisions of the Insurance Code governing Title Insurance do not grant specific statutory authority to the Insurance Commissioner to regulate rates of Title Insurers, Underwritten Title Companies or Controlled Escrow Companies. Regulatory power in this area is derived from the provisions of the Insurance Code governing insurers generally.

Senate Bill 1293 establishes a ... pattern of rate regulation for the business of Title Insurance. The Commissioner is thereby granted specific statutory authority to order termination of rates which are found to be excessive, inadequate or unfairly discriminatory.

(Sen. Zenovich, sponsor of Sen. Bill No. 1293 (1973-1974 Reg. Sess.), letter to Governor, Sept. 18, 1973.)

Existing law provides that the central purpose of title insurance regulation is "to promote the public welfare by regulating rates for the business of title insurance...to the end that they shall not be excessive, inadequate or unfairly discriminatory". (Cal. Ins. Code § 12401.) Existing law also emphasizes the need for any regulation "to permit and encourage competition" and in furtherance of that end, provides that any regulation must not "fix and determine a rate level by classification or otherwise." (*Ibid.*) In the event that "(1) the rate is unreasonably high for the insurance or other services provided, and (2) a reasonable degree of competition does not exist in the particular phase of the business of title insurance to which the rate is applicable", the Commissioner is vested with the authority to declare such rates excessive. (Cal. Ins. Code § 12401.3.)

The Commissioner's efforts to ensure uniform administration of the rate regulation laws and to

review and evaluate individual rate filings are aided by the Commissioner's authority to develop a statistical plan that includes the financial data relating to economic performance and the rating systems in use within the state. (Cal. Ins. Code § 12401.5.)

Objectives for Proposed Action

A study conducted for the Commissioner has concluded that a reasonable degree of competition does not exist in four phases of the business of title insurance: 1) title search, examination and commitment; 2) issuance and servicing of the title insurance policy; 3) escrow and closing; and 4) other services. (Birnbaum, Report to the Insurance Commissioner: An Analysis of Competition in the California Title Insurance and Escrow Industry (Dec. 2005) pp. 92-95 ("Competition Report").) The Commissioner agrees with the findings of this report, and has concluded that a comprehensive, uniform system for preventing excessive rates is necessary to ensure appropriate rates in this non-competitive climate.

The Commissioner proposes to amend article 14 to subchapter 3 and add article 7.1 to subchapter 3 of chapter 5, title 10 of the California Code of Regulations. The proposed regulations will provide the Commissioner with a statistical plan and a related system for reviewing rates and charges assessed by those entities engaged in the business of title insurance. The proposed regulations are necessary to ensure that rates can be effectively monitored to the end that no rate shall remain excessive. The proposed regulations are authorized by Insurance Code sections 12401.3 and 12401.5, which require the Commissioner to prohibit excessive rates and permit the Commissioner to collect financial data from title entities to generate statistical information for the purpose of reviewing and evaluating individual rate filings.

Comparable Federal Law

The Real Estate Settlement Procedures Act (RESPA) is a federal statute that sets forth disclosure requirements for residential real estate transactions. (Title 12, U.S. Code, sections 2601-2617.) The RESPA requires, among other things, that borrowers must be informed of all closing costs, lender servicing and escrow account practices, including business relationships between closing service providers and other parties to the real estate transaction. The RESPA also outlines the settlement/closing process for the real estate loan transaction and prohibits illegal activity such as kickbacks and referral fees among settlement service providers.

By contrast, the proposed regulations require entities engaged in the business of title insurance, as defined by Insurance Code section 12340.3, to report to the Commissioner information relating to the costs of all phases of the business of title insurance. Additionally, the proposed regulations set forth a detailed formula to ensure that charges filed by entities engaged in the business of title insurance, as defined by Insurance Code section 12340.3, are not excessive. The proposed regulations do not create any duties to disclose information to borrowers. To the extent that illegal activity such as kickbacks and referral fees are regulated by the Commissioner, those standards are not set forth in these regulations. While the RESPA contains particular prohibitions and disclosure requirements for the real estate transaction, the required disclosures do not conflict with, or duplicate, the requirements set forth in these proposed regulations.

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code Section 11346.45, the Department posted on its website an Invitation to Prenotice Public Discussions. The Invitation was also mailed to a number of interested consumers and title insurance entities. Subsequently, in January of 2006, the Department held a one-day workshop in order to receive comments about the report written by Birny Birnbaum, entitled "An Analysis of Competition in the California Title Insurance and Escrow Industry" (December, 2005). Input from workshop participants was taken into account in the formulation of the proposed regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed regulations are insurers, underwritten title companies and controlled escrow companies that are engaged in the business of title insurance within the meaning of California Insurance Code section 12340.3. The proposed regulations will require entities that are engaged in the business of title insurance to provide detailed annual

reports of their experience, including detailed reports of their written premium and costs associated with the business of title insurance. This may affect those businesses that have traditionally failed to maintain detailed records of their business activities.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTING REQUIREMENT

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these regulations which require a report apply to businesses.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the State. The proposed regulations, by prohibiting excessive rates and lowering premiums for consumers, will reduce title and escrow expenditures. Thus, the Commissioner believes that the proposed regulations will have a positive impact upon jobs in California. If one were to assume, for example, that the proposed regulations will reduce title and escrow expenditures by 20%, or \$800 million, the resulting savings in expenses could reasonably be expected to result in new jobs for Californians. The Commissioner does not foresee that the proposed regulations will have a negative impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The proposed regulations will affect housing costs. Under the present regulatory framework, title insurers and controlled escrow entities are generally free to charge excessive rates. Existing law permits title insurers and controlled escrow companies to charge excessive rates until such time as the Commissioner determines that a reasonable degree of competition within a particular phase of the title marketplace does not exist.

With the proposed regulations, the Commissioner has now determined that a reasonable degree of competition does not exist with respect to four critical phases of the business of title insurance. Some title insurers and controlled escrow companies within the State of California have charged, and continue to charge, excessive rates for title insurance and escrow services. Because the proposed regulations will prevent excessive title and escrow rates, the Commissioner anticipates that the effect will be to reduce housing costs. The Commissioner believes that the proposed regulations will reduce title and escrow expenditures by at least 20%; a significant reduction. In terms of total housing costs, the reduction will typically be less than 1% of the total purchase price, including closing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies, financial institutions, subdividers, developers, and services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons for the proposed regulations. The initial statement of reasons will be subject to amendment, and at the conclusion of this rulemaking process a final statement of reasons will be prepared. Upon **written or e-mail** request, the rulemaking file, including the final statement of reasons, all information upon which the regulations are based and the express terms of the proposed regulation will be made available for inspection and copying once it has been prepared. Written requests for the rulemaking file

should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Just to the left of the center of the page, click the heading 'Industry.' In this section, scroll down until you see the subheading 'Legal Information.' Below this subheading, click on the 'Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH05049799" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "12401.3"), or search by keyword ("title insurance," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Title Insurance Rate Regulations and Statistical Plan' link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

Dated: June 30, 2006

JOHN GARAMENDI
Insurance Commissioner

By _____
Bryant Henley
Staff Counsel